

401 KAR 39:120. Permit review, determination timetables, and fees.

RELATES TO: KRS 224.1, 224.10, 224.40, 224.46, 224.50, 224.99, 40 C.F.R. Part 270

STATUTORY AUTHORITY: KRS 224.10-100, 224.10-220, 224.46-550

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100(20) authorizes the Energy and Environment Cabinet to promulgate an administrative regulation for a reasonable schedule of fees for the cost of processing applications for permits, exemptions, and partial exemptions. KRS 224.46-550 requires the cabinet to promulgate administrative regulations requiring the payment of reasonable fees for hazardous waste registration certificates and permits. KRS 224.10-220 requires the cabinet to establish timetables for the review and determination of permit applications. This administrative regulation establishes timetables for the review and determination of hazardous waste permit applications and the fee schedule for hazardous waste management.

Section 1. Applicability. (1) This administrative regulation shall apply to:

(a) An owner or operator of a hazardous waste site or facility in Kentucky that submits an application for:

1. A treatment, storage, or disposal facility permit;
2. A post-closure permit;
3. A permit that contains exposure information reports for treatment, storage, or disposal of hazardous waste in a surface impoundment or landfill;
4. An emergency permit;
5. A land treatment demonstration permit; or
6. An emergency identification number;

(b) A person who:

1. Is a recycler of hazardous waste; or
 2. Petitions the cabinet to include additional wastes as a universal waste;
- (c) A marketer or burner of hazardous waste fuel or used oil burned for energy recovery;
- (d) A large quantity handler of universal waste;
- (e) A used oil processor, refiner, burner, or marketer;
- (f) A hazardous waste transporter;
- (g) A hazardous waste generator; and
- (h) A generator who treats hazardous waste on-site.

(2) This administrative regulation shall apply to all applications for hazardous waste site or facility permits submitted, including those applications that are not complete.

Section 2. Filing Fees. (1) Any owner or operator who submits a Part A Permit Application, incorporated by reference in 401 KAR 39:060, for a treatment, storage, or disposal facility shall submit a filing fee in the amount of \$1,000.

(2)(a) Any owner or operator that submits an application for a post-closure permit or permit renewal for a hazardous waste site or facility shall submit a filing fee in the amount of \$4,000.

(b) The filing fee established in paragraph (a) of this subsection shall not apply to owners and operators of hazardous waste sites or facilities that submit a post-closure plan as part of an application for an operation permit for a landfill required in 401 KAR 39:060, Section 5.

Section 3. Review Fees. (1) In addition to those fees established by KRS 224.46-016, any owner or operator who submits a permit application for a treatment, storage, or disposal facility shall submit the following unit fees:

- (a) Containment buildings - \$7,400;

- (b) Drip pads - \$3,700;
- (c) Miscellaneous units:
 1. Treatment unit - \$15,800;
 2. Storage unit - \$3,700; and
 3. Disposal unit - \$12,200; and
- (d) Boilers and industrial furnaces - \$19,400.

(2) Any owner or operator that submits a closure plan for a treatment, storage, or disposal facility shall submit:

- (a) A closure plan fee of \$3,600;
- (b) A facility assessment fee in accordance with KRS 224.46-016; and
- (c) A review fee for each type of hazardous waste management unit being closed.

1. The fee for incinerators shall be submitted one (1) time for each different type of incinerator.

2. The fees for tanks and containers shall be submitted one (1) time for each different tank design or container type.

3. Tank design criteria shall include differences in materials of construction, pressure vessels, nonpressure vessels, shape, and ancillary equipment.

4. Container types shall include drums, tote bins, bottles, and roll-off boxes.

5. The fees shall be:

- a. Incinerator - \$2,000;
- b. Waste piles - \$1,000;
- c. Surface impoundments - \$1,500;
- d. Tanks - \$660;
- e. Containers - \$460;
- f. Land treatment - \$2,000;
- g. Landfill - \$2,000;
- h. Containment buildings - \$660;
- i. Drip pads - \$660;
- j. Miscellaneous units:
 - (i) Treatment unit - \$2,000;
 - (ii) Storage unit - \$660; and
 - (iii) Disposal unit - \$1,000; and
- k. Boilers and industrial furnaces - \$2,000.

(3) Any owner or operator that is required to submit to the cabinet a facility investigation plan or a corrective action plan shall submit with the plans the applicable review fee upon the request of the cabinet. These fees shall be the cost of review, but shall not exceed the following amounts:

- (a) Facility investigation plan - the fee as established in KRS 224.46-016;
- (b) Corrective action plan - the fee as established in KRS 224.46-016;
- (c) Corrective action management unit - \$3,700; and
- (d) Temporary unit:
 1. Temporary containers - \$3,000; and
 2. Temporary tanks - \$3,700.

(4) In addition to those fees established by KRS 224.46-018, any owner or operator that modifies a permit shall submit the fees established in this subsection.

(a) An owner or operator that modifies an existing hazardous waste treatment, storage, or disposal facility permit to add one (1) or more waste streams, or a waste stream with the same characteristic that is already permitted, shall submit the following fees along with the modification:

1. Containment buildings - \$3,400;

2. Drip pads - \$3,400;

3. Miscellaneous units:

a. Treatment unit - \$5,500;

b. Storage unit - \$3,400; and

c. Disposal unit - \$4,500; and

4. Boilers and industrial furnaces - \$6,500.

(b) An owner or operator that modifies an existing hazardous waste treatment, storage, or disposal facility permit by constructing or operating an additional hazardous waste treatment, storage, or disposal unit, or by substantially modifying an existing hazardous waste treatment, storage, or disposal unit, shall submit the following fees along with the modification:

1. Containment buildings - \$7,400;

2. Drip pads - \$3,700;

3. Miscellaneous units:

a. Treatment unit - \$15,800;

b. Storage unit - \$3,700; and

c. Disposal unit - \$12,200; and

4. Boilers and industrial furnaces - \$19,400.

(5)(a) Any owner or operator that submits an application for a post-closure permit or permit renewal for a hazardous waste site or facility, but has not received a permit, shall submit a review fee in the amount of \$9,000.

(b) This fee shall not apply to owners and operators of hazardous waste sites or facilities that submit a post-closure plan as part of an application for an operation permit for a landfill required in 401 KAR 39:060, Section 5 and pay the fees required by this administrative regulation.

(6) Any owner or operator that submits an application for an emergency permit shall submit a review fee in the amount of \$750.

(7) Any owner or operator that submits an application for land treatment disposal shall submit a review fee in the amount of \$5,500.

(8) In addition to any other required registration fees, any owner or operator that submits an application for an emergency identification number shall also submit a review fee in the amount of \$100.

(9) A person petitioning to change the classification of a hazardous waste or a category of hazardous waste to a universal waste shall submit a review fee in the amount of \$2,500.

(10) A person who submits a permit application containing an exposure information report for treatment, storage, or disposal of hazardous waste in a surface impoundment or landfill shall submit a review fee in the amount of \$5,000.

Section 4. Registration and Fees. (1) In addition to those fees established by KRS 224.46-012 for generators of hazardous waste, an annual registration fee in the amount of \$300 shall be submitted:

(a) Per process for a hazardous waste generator that treats hazardous waste on site;

(b) Per process for a recycler of hazardous waste;

(c) By a marketer or burner of hazardous waste fuel burned for energy;

(d) By a used oil processor, refiner, burner, or marketer; and

(e) By a Kentucky based hazardous waste transporter.

(2) In addition to those fees established by KRS 224.46-012 for generators of hazardous waste, an initial registration fee in the amount of \$300 shall be submitted for:

(a) Nonhazardous used oil activities;

(b) A large quantity handler of universal waste; and

(c) A non-Kentucky based hazardous waste transporter.

(3)(a) An owner or operator that modifies a registration in accordance with 401 KAR 39:080, Section 1(5)(b) shall submit a registration modification fee in the amount of fifty (50) dollars.

(b) The registration modification fee established in paragraph (a) of this subsection shall not apply to a registrant that modifies a registration by only making a name change.

(4)(a) An annual registration fee in the amount of \$200 shall be submitted by a very small quantity generator who submits a registration in accordance with 401 KAR 39:080, Section 1, except as established in subsection (b) of this section.

(b) For a person who submits more than one (1) very small quantity generator registrations under common ownership, that are received on the same date by the hazardous waste branch, an initial fee of \$200 shall be charged to the first registration, and a \$150 fee shall be charged to each additional registration.

Section 5. Submittal of Fees. (1) The fees required in Sections 2 through 4 of this administrative regulation shall be submitted to the cabinet with the application, registration, petition, or other required documentation related to the request.

(2) Fees shall not be refunded if an application, registration, petition, or other request is withdrawn.

(3) All checks or money orders shall be made payable to the Kentucky State Treasurer and note that the fee is for hazardous waste branch.

(4) The cabinet shall refund any fees paid in accordance with Section 1(1)(g) of this administrative regulation, if the cabinet fails to provide a written determination within sixty (60) days of receipt of a generator's request to treat hazardous waste on-site.

Section 6. Permit Review and Determination Timetables. (1) The official date of receipt for documents associated with a hazardous waste permit shall be the date the document is stamped received by the Division of Waste Management.

(2) The applicant for a hazardous waste permit shall have the burden of establishing that the application is in compliance with all applicable requirements of KRS Chapter 224 and 401 KAR Chapter 39.

(3)(a) If a Part A Permit Application, incorporated by reference in 401 KAR 39:060, is required by KRS Chapter 224 and 401 KAR Chapter 39, the applicant shall submit that application at least forty-five (45) days prior to submitting any of the applications set forth in paragraph (b) of this subsection.

(b) The cabinet shall review all hazardous waste permit applications and make a determination to issue or deny a permit within the following timetables:

1. Part B Permit Applications, as referenced in 40 C.F.R. Part 270, for hazardous waste permits for storage in containers or tanks only within 180 calendar days;

2. Part B Permit Applications, as referenced in 40 C.F.R. Part 270, for hazardous waste permits for treatment and storage in containers or tanks within 365 calendar days;

3. Part B Permit Applications, as referenced in 40 C.F.R. Part 270, for hazardous waste incinerators within 365 calendar days;

4. Part B Permit Applications, as referenced in 40 C.F.R. Part 270, for facilities with land-based units, including surface impoundments, waste piles, land treatment units, and landfills, and other miscellaneous units within 365 calendar days;

5. Class 3 modifications to a hazardous waste permit within 365 calendar days;

6. Class 1 and Class 2 modifications to a hazardous waste permit requiring approval within ninety (90) calendar days;

7. Closure plan with groundwater monitoring within 365 calendar days;
8. Closure plan without groundwater monitoring within 180 calendar days; and
9. Renewal of permits shall follow the same timetables as established in subparagraphs 1. through 4. of this paragraph for the applicable type of unit.

(c) The timetables established in paragraphs (a) and (b) of this subsection may be extended to a mutually agreed upon timetable, at the initiative of either the cabinet or the applicant.

1. The purpose and period of the extension shall be in writing and, if agreed to, shall be signed by both the cabinet and the applicant.

2. The agreement to extend the timetable shall become part of the cabinet's administrative record.

(d) If a hazardous waste permit application requires more than one (1) type of permit action as established in paragraph (b) of this subsection, the review time for each permit action shall apply and run consecutively upon computing the total review time for the issuance or denial of the permit.

(4) The time periods established in subsection (3) of this section shall not run:

(a) From the date the cabinet mails or hand delivers a notice of deficiency to an applicant until the date the Division of Waste Management stamps as received a complete response to the deficiencies;

(b) Sixty (60) days from the date of any public hearing or meeting on the application to allow the cabinet time to consider public comments;

(c) From the date the cabinet submits an application to U.S. EPA for overview until the date the cabinet receives U.S. EPA's comments;

(d) From the date a permit application is subject to any adjudicatory process that prevents the cabinet from making a determination to the date all administrative or judicial hearings are final and all parties are in compliance with all final orders resulting from those hearings; and

(e) If a governing body holds a public hearing pursuant to KRS 224.40-310(7), sixty (60) days from the date of publication of the public notice on the hearing.

(5) If two (2) or more permits for a facility, site, source, construction project, or other entity are required from the cabinet, the cabinet may coordinate the issuance of the permits, establishing different review and action times that shall be accomplished by the cabinet or the applicant.

(a) If the permits are coordinated, the cabinet shall notify the applicant and indicate the time frames for which the intermediate actions and final permit actions shall be accomplished.

(b) The established time frame for final action shall not exceed the last date for action required by KRS Chapter 224 and 401 KAR Chapter 39, based on all applications being considered and their filing dates.

(6)(a)1. If a notice of deficiency is sent to an applicant, the applicant shall have forty-five (45) calendar days to respond to the notice of deficiency.

2. The forty-five (45) day time period may be extended by agreement between the cabinet and the applicant.

(b) Failure to respond to a notice of deficiency within the established time shall be grounds for denial of the permit. (15 Ky.R. 715; Am. 1036; 1265; eff. 10-26-1988; 16 Ky.R. 632; 1202; eff. 1-9-1990; 23 Ky.R. 983; eff. 3-12-1997; TAm eff. 8-9-2007; TAm eff. 6-14-2013; 44 Ky.R. 315, 973, 1256; eff. 12-7-2017; Crt eff. 9-5-2018.)